

**Young Bryant d/b/a Fort Sam Houston Beauty Shop and United Food and Commercial Workers, Local Union No. 455, a/w United Food and Commercial Workers International Union, AFL-CIO, Petitioner. Case 23-RC-5190**

31 May 1984

# DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On 20 January 1984 the Regional Director for Region 23 issued his Decision and Direction of Election in the above-styled proceeding in which he found that the Employer was engaged in commerce within the meaning of the Act and asserted jurisdiction. The Regional Director found, contrary to the Employer's contentions, that statutory jurisdiction existed and that the Employer's services to the military exert a substantial impact on the national defense to warrant assertion of jurisdiction. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision contending, *inter alia*, that assertion of jurisdiction on national defense grounds was improper and represents a departure from officially reported Board precedent, and further, that the Regional Director's finding of statutory jurisdiction by taking administrative notice of facts not in evidence was clearly erroneous. The Petitioner filed an opposition to the request for review. By telegraphic order dated 29 February 1984, the National Labor Relations Board granted the Employer's request for review. The election had previously been stayed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings.

The Employer operates a beauty shop in the Main Exchange building at Fort Sam Houston, a United States Army Post,<sup>1</sup> at San Antonio, Texas, under a contract with U.S. Army and Air Force Exchange Service (AAFES). The Petitioner seeks to represent the Employer's approximately five beauticians. Between 7 September 1983 when the Employer commenced operations and 31 December 1983, the Employer had gross income of approximately \$56,000, with a projected gross annual income of \$169,000. Pursuant to the Employer's

contract with AAFES, the Employer pays 36 percent of its gross monthly income to AAFES, which projects to an annual payment of \$61,000. The Employer performs its services exclusively for military personnel and their dependents.

The Employer's owner estimated that approximately 80 percent of the Employer's customers are dependent wives and children of military personnel; 20 percent of its services are provided to Women's Army Corps (WAC) soldiers and to male army doctors. Customers not in uniform must show their ID to be served. The Employer does not provide regulation army haircuts required of all male soldiers except doctors, but does provide regulation haircuts for WACs,<sup>2</sup> who are free to go to other beauty shops in the area or barber shops on the post.

The Employer does not provide special rates for hairstyles to military personnel and dependents; however, discount coupons obtained through the post exchange are accepted.

It is undisputed that the Employer's annual gross income, even on a projected basis, is far short of the Board's \$500,000 jurisdictional standard for retail operations. Nevertheless, the Regional Director asserted jurisdiction on the grounds that he was satisfied statutory jurisdiction existed and that the Employer's operation exerts a substantial impact on national defense. We find merit in the Employer's contention that assertion of jurisdiction is unwarranted in this case.

Initially, regarding the basis for finding statutory jurisdiction, the record reveals the Employer purchases approximately \$1000 of beauty supplies monthly, for items such as shampoo, hair conditioner, color, color rinse, permanents, hair sprays, hair relaxers, lotions, and finger nail polish. An unknown portion of these products are brand name products, e.g., Revlon, Pantene, Wella, Clairol, and Rouix. The Employer obtains its beauty supplies from two sources: Sally Beauty Supply and Bond Beauty Supply, both located in San Antonio, Texas. It also purchased all its equipment, e.g., perming desk, appointment desk, chairs, mirrors, and dryers from Sally Beauty Supply.<sup>3</sup> Although there was no evidence that any of the beauty shop supplies or equipment purchased by the Employer was manufactured or originated outside the State of Texas, the Regional Director concluded that

<sup>2</sup> By regulations, the WACs are required to wear their hair short, above the collar.

<sup>3</sup> Prior to commencing its operation, the Employer purchased approximately \$40,000 worth of furnishings and equipment for the shop. There is no evidence that any of these items were manufactured outside the State of Texas. Moreover, they appear to be in the nature of nonrecurring capital expenditures.

<sup>1</sup> The Employer's shop is the only beauty shop on the post. The nearest off-post beauty shop is about 1-2 miles away. According to the record there are about seven barber shops on the post.

statutory jurisdiction had been satisfied. In doing so, the Regional Director took administrative notice of the fact that many of the brand name products purchased locally by the Employer, e.g., Revlon, Pantene, Wella, and Clairol, originate outside Texas as none of those manufacturers maintains plants in the State of Texas. We have serious doubts as to the propriety of basing the statutory jurisdictional finding in this case on the administrative notice taken by the Regional Director.<sup>4</sup> We would ordinarily remand the matter to the Regional Director to develop affirmative evidence on the issue of statutory jurisdiction; however, it is not necessary in this particular case in view of our finding below that assertion of jurisdiction on the basis of the national defense standard is unwarranted.

The Regional Director correctly noted that, notwithstanding a showing that a jurisdictional monetary standard is not met, the Board nonetheless will assert jurisdiction over enterprises as to which the Board has statutory jurisdiction, where it is shown that an employer's operations exert a substantial impact on national defense. The Board asserts jurisdiction over such enterprises because the Board "has a special responsibility as a Federal agency to reduce the number of labor disputes which might have an adverse effect on the Nation's defense effort." *Ready Mixed Concrete*, 122 NLRB 318, 320 (1958). This does not mean that the national defense standard will be invoked whenever an employer's services are performed for part of the defense establishment. Rather, a case-by-case analysis is required to determine the possible impact a labor dispute might have on the defense facility. We recognize that the Board has applied the national de-

fense standard, in the cases cited by the Regional Director, to enterprises such as barber shops on military installations. *Spruce Up Corp.*, 181 NLRB 721 (1970); *Gino Morena Enterprises*, 181 NLRB 808 (1970). Although those cases did not clearly articulate the basis for finding a substantial impact on national defense, they are factually distinguished in the more recent decision in *Pentagon Barber Shop*, 255 NLRB 1248 (1981), where jurisdiction was declined. The Board concluded that a labor dispute at that business enterprise could not cause a significant disruption to the work at the Pentagon. See also *Kwik Kafe*, 186 NLRB 830, 831 (1970).

Even assuming arguendo that statutory jurisdiction could be found in this case, we conclude that the application of the national defense standard here would be inappropriate. Although the Employer's beauty shop is located on the Army post and its customers are restricted to military personnel and their dependents, it is clear that the Employer provides services predominantly to military dependents including children. It does not provide regulation haircuts to male military customers and base personnel have access to some seven barber shops on the post and other facilities nearby.<sup>5</sup> Although the Employer's business no doubt is to a large extent a convenience to dependents of the military personnel, it does not provide a service essential to operation of the Army post. On these facts, we cannot conclude that a labor dispute at the Employer's beauty shop would have an adverse effect on the normal functioning of the Sam Houston Army Post or substantially impact on the national defense. *Pentagon Barber Shop*, supra.

Accordingly, we find that the policies of the Act would not be effectuated by assertion of jurisdiction in this case assuming, without finding, that statutory jurisdiction has been met. We shall therefore dismiss the petition.

#### ORDER

The petition is dismissed.

<sup>4</sup> Rule 201 of the Federal Rules of Evidence states in relevant part that "a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Under the above standards, it is doubtful that the first test has been met and there is no showing of any qualifying source, under the second test, which was referred to for such a factual finding. See *Precision Carpet*, 223 NLRB 329, 339 fn. 52 (1976).

<sup>5</sup> Compare *Colonial Catering Co.*, 137 NLRB 1607 (1962).